

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00601
Petitioners: Martin D. & Rae Jean Creasbaum
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0159-0081
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held in November 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$15,300, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties on October 14, 2004.
4. A hearing was held on November 17, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 641 Hillside Drive, Dyer, in St. John Township.
6. The subject property is a vacant residential lot consisting of 0.248 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$15,300 for the land. The subject property is unimproved.
9. The Petitioner requests a value of \$1,000 for the land.
10. Rae J. Creasbaum, property owner, and Diane Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property is a rear lot and is incorrectly assessed as a front lot. *Creasbaum testimony; Pet'r Ex. 2, 3.* The parcel is located behind the lot with the Petitioner's home. *Id.*
 - b) The subject property is not level and does not have access to a sidewalk. *Creasbaum testimony; Pet'r Ex. 2.*
 - c) The Petitioner contends that the subject property is subject to frequent flooding and 75% of the subject property is designated wetlands. *Creasbaum testimony; Pet'r Ex. 4, 5.*
 - d) Other parcels in the neighborhood are assessed lower than the subject property. *Creasbaum testimony; Pet'r Ex. 6-9.* Neighbors have improved their properties and stopped the water flow, which has negatively impacted the subject. *Id.*

12. Summary of Respondent's testimony regarding assessment:
 - a) The subject should have been changed to a rear lot at the informal hearing, but was not. *Spenos testimony.*
 - b) The lot is irregular, and should be broken down into four sections to be valued. A 90% negative influence factor should be applied to the entire parcel. *Id.*
 - c) The above corrections addresses the Petitioner's contentions, and lowers the assessed value to \$1,200. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a) The Petition.
 - b) The tape recording of the hearing labeled Lake Co 813.
 - c) Exhibits:

Petitioner's Exhibit 1:	Notice of Final Assessment & Original Assessment
Petitioner's Exhibit 2:	Land Data & Computations
Petitioner's Exhibit 3:	Land Plat of Survey
Petitioner's Exhibit 4:	Delineation of Wetland Boundaries – County Map
Petitioner's Exhibit 5:	Pictures Showing Sever Flooding on Property

Petitioner's Exhibit 6: Kicks Parcel of Lot #75 & Assessment
Petitioner's Exhibit 7: Ken Bogs Parcel of Lot #75 & Assessment
Petitioner's Exhibit 8: W. Bators Parcel of Lot #75 & Assessment
Petitioner's Exhibit 9: M. Dobrzeniecki's Parcel of Lot #75 & Assessment
Petitioner's Exhibit 10: 1990 Assessment Review & Findings
Petitioner's Exhibit 11: Property Description
Petitioner's Exhibit 12: 1995 Assessment
Petitioner's Exhibit 13: Property Record Showing Different & Conflicting
Land Data From Present

Respondent's Exhibit 1: Form 139L Petition
Respondent's Exhibit 2: Subject Property Record Card
Respondent's Exhibit 3: Neighborhood Valuation Form

Board Exhibit A: Form 139L Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Bd. Of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board....through every element of the analysis”).
- a) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner did provide sufficient testimony to support the Petitioner’s contentions. The Respondent agreed with the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property was incorrectly assessed as a front lot and should be assessed as a rear lot. The Petitioner requests an assessed value of \$1,000.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c) The Petitioner submitted evidence that the parcel in question is a rear lot, and should be assessed as such. The Petitioner provided no documentation, however, in support of the requested assessment of \$1,000.
- d) The Respondent agreed with the Petitioner’s contentions. The Respondent recalculated the assessment, addressing the Petitioner’s contentions, and determined that the correct assessed value of the parcel is \$1,200.
- e) The Petitioner did not prove that the market value of the subject property is less than \$1,200.
- f) Therefore, the Board hereby lowers the assessment of the subject property to \$1,200.

Conclusion

- 16. The Petitioner did establish a prima facie case. The Respondent agreed with the Petitioner’s contentions. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to \$1,200.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.